

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Petitioner,

v.

CRIMINAL ACTION NO. 3:06-CR-7
(BAILEY)

WILLIAM AMBROSE STEWART,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION THAT
LETTER DOCKETED AS MOTION TO REDUCE SENTENCE BE DENIED

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Order dated January 28, 2008 [Doc. 242], this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on March 21, 2008 [Doc. 261]. In that filing, the magistrate judge recommended that this Court deny the defendant's letter docketed as a motion to reduce sentence [Doc. 239].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's R & R were due within ten (10) days of its receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects service was accepted on March 25, 2008. To date, no objections to the R & R have been filed. Accordingly, this Court will review the report and recommendation for clear error.

This defendant was detained on February 8, 2006. On July 6, 2006, he was sentenced and continued to be held in the United States Marshals Service custody until he was delivered to FCI Elkton on November 28, 2006. The defendant contends that he is entitled to credit for time served from February 8, 2006, when he was first taken into custody and this Court has the power to credit that time toward his sentence.

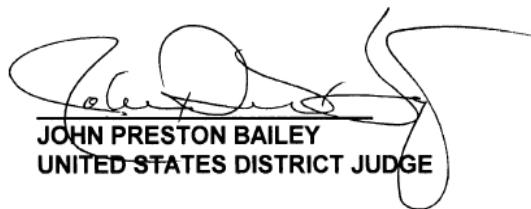
This Court, however, lacks jurisdiction to consider the defendant's request. The defendant has not exhausted his administrative remedies. Furthermore, only the district of incarceration has jurisdiction of the defendant's claim.

Accordingly, upon careful review of the above, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 261] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court hereby **DENIES** the defendant's letter docketed as a motion to reduce sentence [Doc. 239].

It is so **ORDERED**.

The Clerk is directed to mail a true copy of this Order to the *pro se* petitioner and to transmit copies to all counsel of record.

DATED: April 15, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE